

Prob 12C Amended 1
(Rev. 3/06 D/H)

ORIGINAL

United States District Court

for the

DISTRICT OF HAWAII

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JUN 15 2006

at 10 o'clock and 46 min. by
SUE BEITIA, CLERK

U.S.A. vs. KELEMETE USUVALE Docket No. CR 01-00327SOM-01

AMENDED REQUEST FOR COURSE OF ACTION (Statement of Alleged Violations of Supervised Release)

COMES NOW DEREK M. KIM, SENIOR PROBATION OFFICER OF THE COURT, presenting an official report upon the conduct and attitude of KELEMETE USUVALE who was placed on supervision by the Honorable Susan Oki Mollway sitting in the Court at Honolulu, Hawaii, on the 5th day of February 2002, who fixed the period of supervision at 6 years and imposed the general terms and conditions theretofore adopted by the Court and also imposed special conditions and terms as follows:

1. The defendant shall abide by the standard conditions of supervision.
2. The defendant shall participate in a substance abuse program, which may include drug testing at the discretion and direction of the Probation Office.
3. The defendant is prohibited from possessing any illegal or dangerous weapons.
4. Without the prior approval of the Probation Office, the defendant shall not enter the "Operation Weed and Seed" target area which is bordered by Lunalilo Freeway, Nuuanu Avenue, Bethel Street, Nimitz Highway, North King Street, Dillingham Boulevard, and Kokea Street, as depicted in the map to be attached to the Judgment.

On 7/18/2003, the offender's supervised release commenced.

On 5/12/2004, the Court modified the offender's supervised release conditions as follows:

5. That the defendant shall perform 8 hours of community service per week until he has secured full-time employment approved by the Probation Office.

On 9/2/2004, the offender appeared before the Court for supervision violations which included 1) The offender refused to submit to drug testing at the Drug Addiction Services of Hawaii, Inc. (DASH), on 8/9/2003, 9/23/2003, 5/12/2004, and 5/19/2004; 2) The offender failed to submit a Monthly Supervision Report for April and May 2004; 3) The offender failed to notify the Probation Officer of his change in employment in December 2003; 4) The offender failed to follow the Probation Officer's instructions of 11/5/2003, 1/30/2004, 2/5/2004, 3/5/2004, and 5/6/2004. The offender admitted to the violations. Thereafter, the Court found the violations to be Grade C violations, that the offender had a criminal history category of III, and that the applicable guidelines were 5 to 11 months. The offender requested that he be

allowed to enter First L.A.P., a secular, residential clean and sober home in Palolo. Subsequently, the Court continued sentencing to 9/16/2004.

On 9/16/2004, the Court revoked the offender's supervised release and sentenced him to "time served" (approximately 3 months), followed by 57 months supervised release with the following special conditions:

1. That the defendant is prohibited from possessing any illegal or dangerous weapons.
2. That the defendant participate in a substance abuse program, which may include drug testing at the discretion and direction of the Probation Office.
3. That the defendant provide the Probation Office access to any requested financial information.
4. Without the prior approval of the Probation Office, the defendant shall not enter the "Operation Weed and Seed" target area which is bordered by Lunalilo Freeway, Nuuanu Avenue, Bethel Street, Nimitz Highway, North King Street, Dillingham Boulevard, and Kokea Street, as depicted in the map to be attached to the Judgment.
5. That the defendant perform 8 hours of community service per week until he has secured full-time employment approved by the Probation Office.
6. That the defendant reside for 6 months at a facility such as First L.A.P., as arranged by the Probation Office and shall abide by the conditions of the program. The defendant shall notify the Probation Officer 3 hours prior to the end of the close of business, the name, address, and telephone number of any other residence or lodging he intends to stay overnight.

On 9/16/2004, the offender's second term of supervised release commenced.

On 5/12/2006, the Court modified the offender's supervised release conditions as follows:

General Condition: That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of the commencement of supervision and at least two drug tests thereafter but no more than eight valid drug tests per month during the term of supervision, unless there is a positive drug test, in which event the maximum shall increase to up to one valid drug test per day.

Special Condition No. 2: That the defendant shall participate in and comply with substance abuse treatment which includes drug and alcohol testing, at the discretion and direction of the Probation Office. The defendant is to refrain from the possession and/or use of alcohol while participating in substance abuse treatment.

Special Condition No. 7: That the defendant shall submit his person, residence, place of employment, or vehicle to a search conducted by the U.S. Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other resident that the premises may be subject to search pursuant to this condition.

On 5/16/2006, a Request for Course of Action (Probation Form 12C) informed the Court of the following violations: 1) The offender failed to submit timely Monthly Supervision Reports for the months of January 2006, February 2006, and March 2006, in violation of Standard Condition No. 2; 2) The offender failed to notify the Probation Officer of his change in residence in April 2006, and change in employment in February 2006, in violation of Standard Condition No. 6; 3) The offender admitted that he smoked methamphetamine and marijuana in April 2006, in violation of the General Condition; and 4) The offender failed to follow the Probation Officer's 5/1/2006 instructions, in violation of Standard Condition No. 3.

On 5/18/2006, a No-Bail Warrant was issued for the offender's arrest.

RESPECTFULLY PRESENTING PETITION FOR ACTION OF COURT FOR CAUSE AS FOLLOWS:

Alleged Violation(s) of Supervised Release

That the petition for Request for Course of Action dated 5/16/2006 and filed on 5/18/2006 include the following additional violation:

5. The offender possessed drug paraphernalia, to wit: a glass pipe and a 1-inch by 1.25-inch "ziplock" bag commonly related to the use and possession of a controlled substance, in violation of Standard Condition No. 7.

Based on the above, the U.S. Probation Officer recommends that the Request for Course of Action dated 5/16/2006 and filed on 5/18/2006 be amended to include the additional violation.

PRAYING THAT THE COURT WILL ORDER ONE OF THE FOLLOWING COURSES OF ACTION:

- ☒ That the Request for Course of Action dated 5/16/2006 and filed on 5/18/2006 be amended to include the additional violation and that the offender be brought before the Court to show cause why supervision should not be revoked.

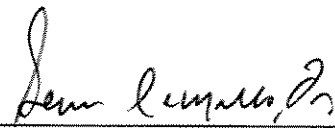
☐ Other

I declare under penalty of perjury that the foregoing is true and correct

Executed on 6/14/2006


DEREK M. KIM
Senior U.S. Probation Officer

Approved by:




GENE DeMELLO, JR.
Supervising U.S. Probation Officer

ORDER OF COURT

THE COURT ORDERS that the Request for Course of Action dated 5/16/2006 and filed on 5/18/2006 be amended to include the additional violation and that the offender be brought before the Court to show cause why supervision should not be revoked.

Considered and ordered this 14th day of June, 2006, and ordered filed and made a part of the records in the above case.


SUSAN OKI MOLLWAY
U.S. District Judge

Re: **USUVALE, Kelemete**
Criminal No. CR 01-00327SOM-01
REVOCATION OF SUPERVISED RELEASE

STATEMENT OF FACTS

Following the filing of the revocation petition dated 5/16/2006, the Probation Office learned of this additional violation.

Violation No. 5 - Possession of Drug Paraphernalia, to Wit: a Glass Pipe and a 1-Inch by 1.25-Inch "Ziplock" Bag Commonly Related to the Use and Possession of a Controlled Substance:

On 6/14/2006, this officer and Supervising U.S. Probation Officer (SUSPO) Gene DeMello, Jr., accompanied the U.S. Marshals Service (USMS) to the offender's last reported employment in Waikiki. While conducting surveillance at the offender's job site, the offender was identified as he proceeded toward the site with another employee.

The offender was subsequently apprehended by the USMS. Thereafter, the offender was allowed to give his personal effects to the other employee, later identified as his supervisor. During this time, the offender handed a black, pocket-type carrier to this officer to give to the offender's supervisor. This officer could feel that the carrier contained a 3- to 4-inch cylindrical object with a bulbed end. Based on this officer's experience in dealing with drug paraphernalia, as well as the offender's prior admission that he was actively using methamphetamine and marijuana in April 2006, this officer had reasonable suspicion to believe that the cylindrical object was a glass pipe used for smoking illicit drugs. Thereafter, in the presence of the offender, the USMS, and SUSPO DeMello, this officer opened the carrier and recovered a glass pipe used for smoking illicit drugs. Additionally, a clear, 1-inch by 1.25-inch "ziplock" bag was found in the carrier next to the pipe. The "ziplock" contained a minute amount of a white, crystal-like substance.

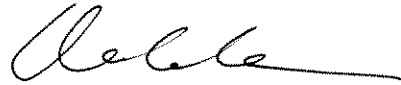
This officer did not hand the items to the offender's supervisor. The offender was subsequently arrested and taken into custody by the USMS.

Thereafter, in the presence of SUSPO DeMello, a field-test of the residue from the recovered glass pipe and of the minute amount of substance recovered in the "ziplock" bag revealed that both substances were methamphetamine.

Re: **USUVALE, Kelemete**
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In light of the aforementioned violation, this officer requests that the Request for Course of Action dated 5/16/2006 and filed on 5/18/2006 include the additional violation.

Respectfully submitted by,



DEREK M. KIM
Senior U.S. Probation Officer

Approved by:



GENE DeMELLO, JR.
Supervising U.S. Probation Officer

DMK/pts

Re: **USUVALE, Kelemete**
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**NOTICE OF ADDITIONAL CONDITION(S) OF SUPERVISION THAT MAY WARRANT
CONSIDERATION**

There do not appear to be any circumstances that warrant imposition of additional conditions at this time.